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HOUSE BILL 808

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONTROLLED SUBSTANCES; EXPANDING THE DEFINITION OF  
A DRUG-FREE SCHOOL ZONE IN THE CONTROLLED SUBSTANCES ACT TO  
INCLUDE PRIVATE, PAROCHIAL AND CHARTER SCHOOLS AND PRIVATE  
PROPERTY WITHIN ONE THOUSAND FEET OF A SCHOOL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-2 NMSA 1978 (being Laws 1972,  
Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled  
Substances Act:

A. "administer" means the direct application of a  
controlled substance by any means to the body of a patient or  
research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts  
on behalf of a manufacturer, distributor or dispenser. It does

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1 not include a common or contract carrier, public warehouseman  
2 or employee of the carrier or warehouseman;

3 C. "board" means the board of pharmacy;

4 D. "bureau" means the narcotic and dangerous drug  
5 section of the criminal division of the United States  
6 department of justice, or its successor agency;

7 E. "controlled substance" means a drug or substance  
8 listed in Schedules I through V of the Controlled Substances  
9 Act or rules adopted thereto;

10 F. "counterfeit substance" means a controlled  
11 substance that bears the unauthorized trademark, trade name,  
12 imprint, number, device or other identifying mark or likeness  
13 of a manufacturer, distributor or dispenser other than the  
14 person who in fact manufactured, distributed or dispensed the  
15 controlled substance;

16 G. "deliver" means the actual, constructive or  
17 attempted transfer from one person to another of a controlled  
18 substance or controlled substance analog, whether or not there  
19 is an agency relationship;

20 H. "dispense" means to deliver a controlled  
21 substance to an ultimate user or research subject pursuant to  
22 the lawful order of a practitioner, including the  
23 administering, prescribing, packaging, labeling or compounding  
24 necessary to prepare the controlled substance for that  
25 delivery;

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1 I. "dispenser" means a practitioner who dispenses  
2 and includes hospitals, pharmacies and clinics where controlled  
3 substances are dispensed;

4 J. "distribute" means to deliver other than by  
5 administering or dispensing a controlled substance or  
6 controlled substance analog;

7 K. "drug" or "substance" means substances  
8 recognized as drugs in the official United States  
9 pharmacopoeia, official homeopathic pharmacopoeia of the United  
10 States or official national formulary or any respective  
11 supplement to those publications. It does not include devices  
12 or their components, parts or accessories;

13 L. "hashish" means the resin extracted from any  
14 part of marijuana, whether growing or not, and every compound,  
15 manufacture, salt, derivative, mixture or preparation of such  
16 resins;

17 M. "manufacture" means the production, preparation,  
18 compounding, conversion or processing of a controlled substance  
19 or controlled substance analog by extraction from substances of  
20 natural origin or independently by means of chemical synthesis  
21 or by a combination of extraction and chemical synthesis and  
22 includes any packaging or repackaging of the substance or  
23 labeling or relabeling of its container, except that this term  
24 does not include the preparation or compounding of a controlled  
25 substance:

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1 (1) by a practitioner as an incident to his  
2 administering or dispensing of a controlled substance in the  
3 course of his professional practice; or

4 (2) by a practitioner, or by his agent under  
5 his supervision, for the purpose of or as an incident to  
6 research, teaching or chemical analysis and not for sale;

7 N. "marijuana" means all parts of the plant  
8 cannabis, including any and all varieties, species and  
9 subspecies of the genus Cannabis, whether growing or not, the  
10 seeds thereof and every compound, manufacture, salt,  
11 derivative, mixture or preparation of the plant or its seeds.  
12 It does not include the mature stalks of the plant, hashish,  
13 tetrahydrocannabinols extracted or isolated from marijuana,  
14 fiber produced from the stalks, oil or cake made from the seeds  
15 of the plant, any other compound, manufacture, salt,  
16 derivative, mixture or preparation of the mature stalks, fiber,  
17 oil or cake, or the sterilized seed of the plant that is  
18 incapable of germination;

19 O. "narcotic drug" means any of the following,  
20 whether produced directly or indirectly by extraction from  
21 substances of vegetable origin or independently by means of  
22 chemical synthesis or by a combination of extraction and  
23 chemical synthesis:

24 (1) opium and opiate and any salt, compound,  
25 derivative or preparation of opium or opiate;

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1 (2) any salt, compound, isomer, derivative or  
2 preparation that is a chemical equivalent of any of the  
3 substances referred to in Paragraph (1) of this subsection,  
4 except the isoquinoline alkaloids of opium;

5 (3) opium poppy and poppy straw, including all  
6 parts of the plant of the species *Papaver somniferum* L. except  
7 its seeds; or

8 (4) coca leaves and any salt, compound,  
9 derivative or preparation of coca leaves, any salt, compound,  
10 isomer, derivative or preparation that is a chemical equivalent  
11 of any of these substances except decocainized coca leaves or  
12 extractions of coca leaves that do not contain cocaine or  
13 ecgonine;

14 P. "opiate" means any substance having an  
15 addiction-forming or addiction-sustaining liability similar to  
16 morphine or being capable of conversion into a drug having  
17 addiction-forming or addiction-sustaining liability. "Opiate"  
18 does not include, unless specifically designated as controlled  
19 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of  
20 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.  
21 "Opiate" does include its racemic and levorotatory forms;

22 Q. "person" means an individual, partnership,  
23 corporation, association, institution, political subdivision,  
24 government agency or other legal entity;

25 R. "practitioner" means a physician, doctor of

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1 oriental medicine, dentist, physician assistant, certified  
2 nurse practitioner, clinical nurse specialist, certified nurse-  
3 midwife, [~~physician assistant~~] prescribing psychologist,  
4 veterinarian, pharmacist, pharmacist clinician or other person  
5 licensed or certified to prescribe and administer drugs that  
6 are subject to the Controlled Substances Act;

7 S. "prescription" means an order given individually  
8 for the person for whom is prescribed a controlled substance,  
9 either directly from the prescriber to the pharmacist or  
10 indirectly by means of a written order signed by the  
11 prescriber, in accordance with the Controlled Substances Act or  
12 rules adopted thereto;

13 T. "scientific investigator" means a person  
14 registered to conduct research with controlled substances in  
15 the course of his professional practice or research and  
16 includes analytical laboratories;

17 U. "ultimate user" means a person who lawfully  
18 possesses a controlled substance for his own use or for the use  
19 of a member of his household or for administering to an animal  
20 under the care, custody and control of the person or by a  
21 member of his household;

22 V. "drug paraphernalia" means all equipment,  
23 products and materials of any kind that are used, intended for  
24 use or designed for use in planting, propagating, cultivating,  
25 growing, harvesting, manufacturing, compounding, converting,

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1 producing, processing, preparing, testing, analyzing,  
2 packaging, repackaging, storing, containing, concealing,  
3 injecting, ingesting, inhaling or otherwise introducing into  
4 the human body a controlled substance or controlled substance  
5 analog in violation of the Controlled Substances Act. It  
6 includes:

7 (1) kits used, intended for use or designed  
8 for use in planting, propagating, cultivating, growing or  
9 harvesting any species of plant that is a controlled substance  
10 or controlled substance analog or from which a controlled  
11 substance can be derived;

12 (2) kits used, intended for use or designed  
13 for use in manufacturing, compounding, converting, producing,  
14 processing or preparing controlled substances or controlled  
15 substance analogs;

16 (3) isomerization devices used, intended for  
17 use or designed for use in increasing the potency of any  
18 species of plant that is a controlled substance;

19 (4) testing equipment used, intended for use  
20 or designed for use in identifying or in analyzing the  
21 strength, effectiveness or purity of controlled substances or  
22 controlled substance analogs;

23 (5) scales or balances used, intended for use  
24 or designed for use in weighing or measuring controlled  
25 substances or controlled substance analogs;

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1 (6) diluents and adulterants, such as quinine  
2 hydrochloride, mannitol, mannite dextrose and lactose, used,  
3 intended for use or designed for use in cutting controlled  
4 substances or controlled substance analogs;

5 (7) separation gins and sifters used, intended  
6 for use or designed for use in removing twigs and seeds from,  
7 or in otherwise cleaning and refining, marijuana;

8 (8) blenders, bowls, containers, spoons and  
9 mixing devices used, intended for use or designed for use in  
10 compounding controlled substances or controlled substance  
11 analogs;

12 (9) capsules, balloons, envelopes and other  
13 containers used, intended for use or designed for use in  
14 packaging small quantities of controlled substances or  
15 controlled substance analogs;

16 (10) containers and other objects used,  
17 intended for use or designed for use in storing or concealing  
18 controlled substances or controlled substance analogs;

19 (11) hypodermic syringes, needles and other  
20 objects used, intended for use or designed for use in  
21 parenterally injecting controlled substances or controlled  
22 substance analogs into the human body;

23 (12) objects used, intended for use or  
24 designed for use in ingesting, inhaling or otherwise  
25 introducing marijuana, cocaine, hashish or hashish oil into the

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1 human body, such as:

2 (a) metal, wooden, acrylic, glass,  
3 stone, plastic or ceramic pipes, with or without screens,  
4 permanent screens, hashish heads or punctured metal bowls;

5 (b) water pipes;

6 (c) carburetion tubes and devices;

7 (d) smoking and carburetion masks;

8 (e) roach clips, meaning objects used to  
9 hold burning material, such as a marijuana cigarette, that has  
10 become too small to hold in the hand;

11 (f) miniature cocaine spoons and cocaine  
12 vials;

13 (g) chamber pipes;

14 (h) carburetor pipes;

15 (i) electric pipes;

16 (j) air-driven pipes;

17 (k) chilams;

18 (l) bongs; or

19 (m) ice pipes or chillers; and

20 (13) in determining whether an object is drug  
21 paraphernalia, a court or other authority should consider, in  
22 addition to all other logically relevant factors, the  
23 following:

24 (a) statements by the owner or by anyone  
25 in control of the object concerning its use;

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1 (b) the proximity of the object, in time  
2 and space, to a direct violation of the Controlled Substances  
3 Act or any other law relating to controlled substances or  
4 controlled substance analogs;

5 (c) the proximity of the object to  
6 controlled substances or controlled substance analogs;

7 (d) the existence of any residue of a  
8 controlled substance or controlled substance analog on the  
9 object;

10 (e) instructions, written or oral,  
11 provided with the object concerning its use;

12 (f) descriptive materials accompanying  
13 the object that explain or depict its use;

14 (g) the manner in which the object is  
15 displayed for sale; and

16 (h) expert testimony concerning its use;

17 W. "controlled substance analog" means a substance  
18 other than a controlled substance that has a chemical structure  
19 substantially similar to that of a controlled substance in  
20 Schedule I, II, III, IV or V or that was specifically designed  
21 to produce effects substantially similar to that of controlled  
22 substances in Schedule I, II, III, IV or V. Examples of  
23 chemical classes in which controlled substance analogs are  
24 found include the following:

25 (1) phenethylamines;

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- 1 (2) N-substituted piperidines;
- 2 (3) morphinans;
- 3 (4) ecgonines;
- 4 (5) quinazolinones;
- 5 (6) substituted indoles; and
- 6 (7) arylcycloalkylamines.

7 Specifically excluded from the definition of "controlled  
8 substance analog" are those substances that are generally  
9 recognized as safe and effective within the meaning of the  
10 Federal Food, Drug and Cosmetic Act or have been manufactured,  
11 distributed or possessed in conformance with the provisions of  
12 an approved new drug application or an exemption for  
13 investigational use within the meaning of Section 505 of the  
14 Federal Food, Drug and Cosmetic Act;

15 X. "human consumption" includes application,  
16 injection, inhalation, ingestion or any other manner of  
17 introduction; and

18 Y. "drug-free school zone" means a public school,  
19 parochial school, private school or charter school or property  
20 that is used for [~~public~~] school purposes and the area within  
21 one thousand feet of the school property line, but it does not  
22 mean any post-secondary school."

23 Section 2. Section 30-31-20 NMSA 1978 (being Laws 1972,  
24 Chapter 84, Section 20, as amended) is amended to read:

25 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--

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1 VIOLATION.--

2 A. As used in the Controlled Substances Act,  
3 "traffic" means the:

4 (1) manufacture of any controlled substance  
5 enumerated in Schedules I through V or any controlled substance  
6 analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

7 (2) distribution, sale, barter or giving away  
8 of any controlled substance enumerated in Schedule I or II that  
9 is a narcotic drug or a controlled substance analog of a  
10 controlled substance enumerated in Schedule I or II that is a  
11 narcotic drug; or

12 (3) possession with intent to distribute any  
13 controlled substance enumerated in Schedule I or II that is a  
14 narcotic drug or controlled substance analog of a controlled  
15 substance enumerated in Schedule I or II that is a narcotic  
16 drug.

17 B. Except as authorized by the Controlled  
18 Substances Act, it is unlawful for any person to intentionally  
19 traffic. Any person who violates this subsection is:

20 (1) for the first offense, guilty of a second  
21 degree felony and shall be sentenced pursuant to the provisions  
22 of Section 31-18-15 NMSA 1978; and

23 (2) for the second and subsequent offenses,  
24 guilty of a first degree felony and shall be sentenced pursuant  
25 to the provisions of Section 31-18-15 NMSA 1978.

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1           C. Any person who knowingly violates Subsection B  
2 of this section within a drug-free school zone [~~excluding~~  
3 ~~private property residentially zoned or used primarily as a~~  
4 ~~residence~~] is guilty of a first degree felony and shall be  
5 sentenced pursuant to the provisions of Section 31-18-15 NMSA  
6 1978."

7           Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,  
8 Chapter 84, Section 22, as amended) is amended to read:

9           "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--  
10 DISTRIBUTION PROHIBITED.--

11           A. Except as authorized by the Controlled  
12 Substances Act, it is unlawful for any person to intentionally  
13 distribute or possess with intent to distribute a controlled  
14 substance or a controlled substance analog except a substance  
15 enumerated in Schedule I or II that is a narcotic drug or a  
16 controlled substance analog of a controlled substance  
17 enumerated in Schedule I or II that is a narcotic drug. Any  
18 person who violates this subsection with respect to:

19                   (1) marijuana is:

20                           (a) for the first offense, guilty of a  
21 fourth degree felony and shall be sentenced pursuant to the  
22 provisions of Section 31-18-15 NMSA 1978;

23                           (b) for the second and subsequent  
24 offenses, guilty of a third degree felony and shall be  
25 sentenced pursuant to the provisions of Section 31-18-15 NMSA

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1 1978;

2 (c) for the first offense, if more than  
3 one hundred pounds is possessed with intent to distribute or  
4 distributed or both, guilty of a third degree felony and shall  
5 be sentenced pursuant to the provisions of Section 31-18-15  
6 NMSA 1978; and

7 (d) for the second and subsequent  
8 offenses, if more than one hundred pounds is possessed with  
9 intent to distribute or distributed or both, guilty of a second  
10 degree felony and shall be sentenced pursuant to the provisions  
11 of Section 31-18-15 NMSA 1978;

12 (2) any other controlled substance enumerated in  
13 Schedule I, II, III or IV or a controlled substance analog of a  
14 controlled substance enumerated in Schedule I, II, III or IV  
15 except a substance enumerated in Schedule I or II that is a  
16 narcotic drug or a controlled substance analog of a controlled  
17 substance enumerated in Schedule I or II that is a narcotic  
18 drug, is:

19 (a) for the first offense, guilty of a third  
20 degree felony and shall be sentenced pursuant to the provisions  
21 of Section 31-18-15 NMSA 1978; and

22 (b) for the second and subsequent offenses,  
23 guilty of a second degree felony and shall be sentenced  
24 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

25 (3) a controlled substance enumerated in

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1 Schedule V or a controlled substance analog of a controlled  
2 substance enumerated in Schedule V is guilty of a misdemeanor  
3 and shall be punished by a fine of not less than one hundred  
4 dollars (\$100) or more than five hundred dollars (\$500) or by  
5 imprisonment for a definite term not less than one hundred  
6 eighty days but less than one year, or both.

7 B. Except as authorized by the Controlled Substances  
8 Act, it is unlawful for any person to intentionally create or  
9 deliver, or possess with intent to deliver, a counterfeit  
10 substance. Any person who violates this subsection with  
11 respect to:

12 (1) a counterfeit substance enumerated in  
13 Schedule I, II, III or IV is guilty of a fourth degree felony  
14 and shall be sentenced pursuant to the provisions of Section  
15 31-18-15 NMSA 1978; and

16 (2) a counterfeit substance enumerated in  
17 Schedule V is guilty of a petty misdemeanor and shall be  
18 punished by a fine of not more than one hundred dollars (\$100)  
19 or by imprisonment for a definite term not to exceed six  
20 months, or both.

21 C. Any person who knowingly violates Subsection A or  
22 B of this section while within a drug-free school zone  
23 [~~excluding private property residentially zoned or used~~  
24 ~~primarily as a residence~~] with respect to:

25 (1) marijuana is:

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1 (a) for the first offense, guilty of a third  
2 degree felony and shall be sentenced pursuant to the provisions  
3 of Section 31-18-15 NMSA 1978;

4 (b) for the second and subsequent offenses,  
5 guilty of a second degree felony and shall be sentenced  
6 pursuant to the provisions of Section 31-18-15 NMSA 1978;

7 (c) for the first offense, if more than one  
8 hundred pounds is possessed with intent to distribute or  
9 distributed or both, guilty of a second degree felony and shall  
10 be sentenced pursuant to the provisions of Section 31-18-15  
11 NMSA 1978; and

12 (d) for the second and subsequent offenses,  
13 if more than one hundred pounds is possessed with intent to  
14 distribute or distributed or both, guilty of a first degree  
15 felony and shall be sentenced pursuant to the provisions of  
16 Section 31-18-15 NMSA 1978;

17 (2) any other controlled substance enumerated in  
18 Schedule I, II, III or IV or a controlled substance analog of a  
19 controlled substance enumerated in Schedule I, II, III or IV  
20 except a substance enumerated in Schedule I or II that is a  
21 narcotic drug or a controlled substance analog of a controlled  
22 substance [~~enumerated~~] enumerated in Schedule I or II that is a  
23 narcotic drug, is:

24 (a) for the first offense, guilty of a  
25 second degree felony and shall be sentenced pursuant to the

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1 provisions of Section 31-18-15 NMSA 1978; and

2 (b) for the second and subsequent offenses,  
3 guilty of a first degree felony and shall be sentenced pursuant  
4 to the provisions of Section 31-18-15 NMSA 1978;

5 (3) a controlled substance enumerated in  
6 Schedule V or a controlled substance analog of a controlled  
7 substance enumerated in Schedule V is guilty of a fourth degree  
8 felony and shall be sentenced pursuant to the provisions of  
9 Section 31-18-15 NMSA 1978; and

10 (4) the intentional creation, delivery or  
11 possession with the intent to deliver:

12 (a) a counterfeit substance enumerated in  
13 Schedule I, II, III or IV is guilty of a third degree felony  
14 and shall be sentenced pursuant to the provisions of Section  
15 31-18-15 NMSA 1978; and

16 (b) a counterfeit substance enumerated in  
17 Schedule V is guilty of a misdemeanor and shall be punished by  
18 a fine of not less than one hundred dollars (\$100) nor more  
19 than five hundred dollars (\$500) or by imprisonment for a  
20 definite term not less than one hundred eighty days but less  
21 than one year, or both.

22 D. Notwithstanding the provisions of Subsection A of  
23 this section, distribution of a small amount of marijuana for  
24 no remuneration shall be treated as provided in Paragraph [~~3~~]  
25 (1) of Subsection B of Section 30-31-23 NMSA 1978."

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